



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9658]

RIN 1545-BL18

Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9658), which were published in the **Federal Register** on Thursday, March 6, 2014 (79 FR 12726). The regulations relate to the withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, portfolio interest paid to nonresident alien individuals and foreign corporations, and the associated requirements governing collection, refunds, and credits of withheld amounts under these rules.

DATES: This correction is effective on [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN FEDERAL REGISTER] and is applicable on March 6, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy J. Lee, (202) 317-6942 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

## **Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6045 of the Code. The temporary regulation that is the subject of these corrections is §1.6045-1, promulgated under section 6045 of the Internal Revenue Code. This regulation affects persons that are brokers making certain returns of information with respect to their customers.

## **Need for Correction**

As published, the temporary regulation contains errors in the instructions that need to be corrected. First, the instructions indicate that §1.6045-1T is amended. However, the temporary regulation is added, not amended. Second, the instructions do not add paragraphs (m) through (o), which should be included in the temporary regulation by cross-reference to the final regulation. The correcting amendments add the temporary regulation, including paragraphs (m) through (o).

## **List of Subjects in CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6045-1T is added to read as follows:

§1.6045-1T Returns of information of brokers and barter exchanges (temporary).

(a) through (c)(3)(i) [Reserved]. For further guidance, see §1.6045-1(a) through (c)(3)(i)(C)(2)(iv).

(ii) Excepted sales. No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is--

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see §601.601(d)(2) of this chapter); or

(B) A sale with respect to which a return is not required by applying the rules of §1.6049-4(c)(4) (by substituting the term a sale subject to reporting under section 6045 for the term an interest payment).

(iii) through (xiii) [Reserved]. For further guidance, see §1.6045-1(c)(3)(iii) through (xiii).

(xiv) Certain redemptions. No return of information is required under this section for payments made by a stock transfer agent (as described in §1.6045-1(b)(iv)) with respect to a redemption of stock of a corporation described in section 1297(a) with respect to a shareholder in the corporation if--

(A) The stock transfer agent obtains from the corporation a written certification signed by an officer of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of paragraph (c)(3)(xiv) of this section, and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation as a

participating FFI (including a reporting Model 2 FFI) (as defined in §1.6049-4(f)(10) or (f)(14), respectively), or reporting Model 1 FFI (as defined in §1.6049-4(f)(13)), in accordance with the requirements of §1.1471-3(d)(4) (substituting the terms stock transfer agent and corporation for the terms withholding agent and payee);

(C) The stock transfer agent obtains, before each year the payment would otherwise be reported, a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in §1.6049-4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payment.

(xv) Effective/applicability date. Paragraphs (c)(3)(ii) and (xiv) of this section apply to sales effected on or after July 1, 2014. (For sales effected before July 1, 2014, see paragraph (c)(3)(ii) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(c)(4) through (g)(1) [Reserved]. For further guidance, see § 1.6045-1(c)(4) through (g)(1).

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the

broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii), as made to a foreign payee in accordance with §1.6049-5(d)(1), or presumed to be made to a foreign payee under §1.6049-5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in §1.6049-5(c) regarding rules applicable to documentation of foreign status shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with the customer or received instructions with respect to the sale from the customer. The provisions in §1.6049-5(c) regarding the definitions of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman shall also apply for purposes of this paragraph (g)(1)(i). The provisions of §1.1441-1 shall apply by substituting the terms broker and customer for the terms withholding agent and payee and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of §1.6049-5(d) shall apply by substituting the terms broker and customer for the terms payor and payee. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in §1.1441-1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a

broker receives documentary evidence under §1.6049-5(c)(1) or (4).

(ii) through (3)(iii) [Reserved]. For further guidance, see §1.6045-1(g)(1)(ii) through (g)(3)(iii).

(iv) Special rules where the customer is a foreign intermediary or certain U.S. branches. A foreign intermediary, as defined in §1.1441-1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of §1.6049-5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under §1.6049-5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in §1.1441-1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman, which payment the payor or middleman can reliably associate with a valid withholding certificate described in §1.1441-1(e)(3)(ii) or (iii) or §1.1441-1(e)(3)(v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S. branch described in §1.1441-1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. See, however, paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in §1.6049-4(f)(7)). The exception of this paragraph (g)(3)(iv)

for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in §1.1441-1(e)(5)(iii).

(4) Examples. The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in §1.6049-5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in §1.6049-5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in Example 1 except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in Example 2 except that FP is also the agent of A. The result is the same as in Example 2. Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of §1.6049-5(c)(5)).

Example 4. The facts are the same as in Example 1 except that the registered

bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049-5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in Example 4 except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in §1.6049-5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in Example 4 except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under §1.6049-5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of §1.1441-1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(i) Y's obligations to withhold and report. Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042-S under §1.1461-1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.



(ii) X's obligations to withhold and report. Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. See §1.6049-5(c)(5). Under the presumptions described in §1.6049-5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of §1.1441-1(b)(3)(i) through (iii) , with respect to the sales proceeds, to treat A as a partnership that is a U.S. non-exempt recipient because the presumption of foreign status for offshore obligations under §1.1441-1(b)(3)(iii)(D) does not apply. See paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in §1.1471-1(b)(47)) that is excepted from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under §31.3406(g)-1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under §1.1441-1(b)(3)(iii)(D) does not apply. See §1.6049-5(d)(2)(i).

Example 8. The facts are the same as in Example 7, except that X is a foreign corporation that is not a U.S. payor under §1.6049-5(c).

(i) Y's obligations to withhold and report. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(ii) X's obligations to withhold and report. Although A is presumed to be a U.S. payee under the presumptions of §1.6049-5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is not a U.S. payor under §1.6049-5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

(5) Effective/applicability date--(i) [Reserved]. For further guidance, see §1.6045-1(g)(5)(i).

(ii) The provisions of paragraphs (g)(1)(i), (g)(3)(iv), and (g)(4) of this section apply to payments made on or after July 1, 2014.

(h) through (p) [Reserved]. For further guidance, see §1.6045-1(h) through (p).

(q) Expiration date. The applicability of this section expires on February 28, 2017.

Martin V. Franks  
Chief, Publications and Regulations Branch  
Legal Processing Division  
Associate Chief Counsel  
(Procedure and Administration)

[FR Doc. 2014-09161 Filed 04/21/2014 at 8:45 am; Publication Date: 04/22/2014]